80

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No. 4139 of 2005

PETITIONERS (Plaintiffs)

1. Dropadi Bai, widow of Late Santram Chouhan, aged about 52 years.
2. Shivshankar, son of Late Santram Chouhan, aged about 15 years,
3. Manoj Kumar, aged about 11 years, son of Late Santram Chouhan,
4. Kundan Kumar, aged about 11 years, son of Late Santram Chouhan,
5. Mahaveer, son of Late Santram Chouhan, aged about 05 years,

Petitioner NO.2 to 5 are minors, through their next friend (mother) Smt. Dropadi Bai (i.e. the Petitioner No.1)

All are resident of village Rovindvan, Tahsil Bilaigarh, Distt. Raipur (Chhattisgarh)

Vs.

RESPONDENTS (Defendents)

1. Santosh Kumar, son of Late Mahtar, aged about 30 years.
2. Smt. Sona Bai, widow of Late Mahtar, aged about 50 years,

Both are resident of village Rovindvan, Tahsil Bilaigarh, Distt. Raipur (Chhattisgarh)

3. Dasaram, aged about 50 years, son of Bodhram Sahu,

All are resident of village Rovindvan, Tahsil Bilaigarh, Distt. Raipur (Chhattisgarh)

Present: Shri G.S. Agrawal, learned Sr. Advocate with Shri K.R. Nair, learned counsel for the petitioners.
Shri Y.C. Sharma, learned counsel for respondent No.3.

ORAL ORDER
(Passed on 11th September, 2006)

In a suit for a specific performance when it is pending on the file of learned trial Judge, defendant No.2 died. The date of death is not forthcoming. It is stated that defendant No.2 left behind him certain legal representatives of which one was already on record. According to the learned counsel for defendant No.2, the date of death of defendant No.2 was brought to the notice of the learned trial Judge on 11.09.2000 orally, and this fact is recorded in the order sheet of the learned trial Judge. When the matter stood thus, with considerable delay, the remaining two legal representatives moved two applications, one under Order 22 Rule 4 of the Code of Civil Procedure to come on record as legal representatives of deceased defendant No.2 and another under Order 22 Rule 9 to set aside the abatement. The learned trial Judge having opined that the applications are barred by time, has dismissed the applications. The aforesaid two legal representatives of the deceased defendant No.2 feeling aggrieved by the above order of the learned trial Judge preferred appeal to the learned District Judge, and the learned District Judge by the order impugned in this writ petition has dismissed the appeal and confirmed the order of the trial Judge. Hence, this writ petition under Articles 226/227 of the Constitution of India.

(2) I heard learned counsel for the parties. It is not as if the petitioners herein being legal representatives of the deceased defendant No.2 even knowing the date of death of defendant No.2 and the details of the legal representatives left behind him did not take any steps for considerable time. It is not that the learned counsel appearing for the deceased defendant No.2 filed any written report, before the learned trial Judge reporting the death of defendant NO.2 and giving the details of the

legal representatives left behind him by defendant No.2. In the applications filed by the petitioners herein, under Order 22 Rule 4 and under Order 22 Rule 9 of the CPC, it is stated that they are illiterate; they were not aware of the other legal representatives left behind by defendant No.2 and they took immediate steps immediately after they came to know about their details. The Courts have been shown liberal attitude in the matter of impleading the legal representatives to any legal action, the reason being that a procedure is essentially meant to advance justice and not to thwart justice. Furthermore, it needs to be noticed in this case that the suit as such never abated for the simple reason that there were three defendants and even one legal representative of the deceased defendant No.2 was already on record and therefore, the learned trial Judge is bound to try suit in accordance with law. I am of the considered opinion that if the petitioners are not impleaded as legal representative of the deceased defendant No.2, there is likelihood of failure of justice.

(3) In the facts and the circumstances of the case, I am inclined to exercise the discretion in favour of the petitioners. In that view of the matter, I allow the applications filed under Order 22 Rule 4 after allowing application of the petitioners under Order 22 Rule 9 of CPC for setting aside the abatement order. Accordingly, the writ petition is allowed. The impugned order passed by the learned appellate Judge is set aside and the applications filed by the petitioners under Order 22 Rule 4 and under Order 22 Rule 9 are allowed as prayed for, however, subject to the petitioner paying a sum of Rs. 1,500/- to the learned counsel appearing for respondent No.3 within two weeks from today. The petitioners shall stand impleaded as legal representative of the deceased defendant No.2.

Sd/-
Chief Justice